IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

Crl.Rev.Pet.No. 790 of 1998(A)
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CC.453/1996 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOTTAYAM
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REVN. PETITIONER/DEFACTO COMPLAINANT:
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SIVANKUTTY, S/O.LATE P.K.PRABHAKARAN,
PUTHENPARAMBIL HOUSE, PAMPADY, KOTTAYAM.

BY ADV. SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
SRI.P.SATHIKUMAR

RESPONDENTS/COMPLAINANT & ACCUSED:
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1. STATE OF KERALA REPRESENTED BY THE SUB' INSPECTOR OF POLICE, PAMPADY.

2. VASAPPAN, S/O.KOCHU CHERUKKAN, ARYASSERI VEEDU, KOTHALAKARA, KOOROPPARA VILLAGE.

3. RAGHAVAN, S/O.KUNJUKOCHU, MALAMPATHIKKAT VEEDU, KOTHALAKARA, KOOROPPARA VILLAGE.

4. ANILKUMAR, S/O.SUKUMARAN, SALUBHAVAN VEEDU, KOTHALAKARA, KOORAPPARA VILLAGE.

5. KARUNAKARAN NAIR, S/O.MADHAVAN NAIR, VELLARAYIL VEEDU, PANGADAKARA, KOOROPPARA VILLAGE.

6. SUKUMARAN, S/O.VELAYUDHAN, SALU BHAVAN VEEDU, KOTHALAKARA, KOOROPARA VILLAGE.

7. SASIKUMAR, S/O.VELAYUDHAN, MALAMPATHIKKAL VEEDU, KOOROPPADA KARA, KOORAPPADAKARA VILLAGE.

8. BABY, S/O.PHILIPPOSE, VALAVUKUZHIKKAL VEEDU, KOORAPPADA KARA, KOORAPPADAKARA VILLAGE.

9. VINOD, S/O.SASIKUMAR, MALAMPATHIKKAL VEEDU, KOORAPPADA KARA, KOORAPPADAKARA VILLAGE.

10.BAIJU, S/O.SASIKUMAR, MALAMPATHIKKAL VEEDU,
KOORAPPADAKARA, KOORAPPADAKARA VILLAGE.

11. THANKACHAN, S/O.KUNJACHAN, MOOLAKKARA VEEDU,
EDAKKATTUKUNNU BHAGOM, KOTHALAKARA,
KOORAPPADA VILLAGE.

12. JOY, S/O.CHACKO, MALIYIL VEEDU,
PANGADAKARA, KOOROPPADA.

13. KOCHUMON, S/O.CHACKO, MALIYIL VEEDU,
PANGADAKARA, KOOROPPADA.

14. ANILKUMAR, S/O.KARUNAKARAN NAIR,
VELLARAYIL VEEDU, PANGADAKARA,
KOOROPPADA VILLAGE.

BY ADV. SRI.KOSHY GEORGE
SRI.GEORGE ZACHARIAH ERUTHIKKAL
R1 BY PUBLIC PROSECUTOR MR.SHYSON P.MANGUZHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.S.RADHAKRISHNAN, Ag.C.J.**

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**Crl.R.P.No.790 of 1998**

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Dated, this the 31st day of January, 2007

**ORDER**

This criminal revision arises out of the judgment in C.C.No.453 of 1996 on the file of the Judicial Magistrate of the First Class-I, Kottayam. The offences alleged against the accused persons were under Sections 143, 147, 447 and 427 read with 149 IPC. The trial court acquitted all the accused persons against which this revision has been preferred.

2. The revision petitioner says that there are ample evidence in the case to convict all the accused persons and the learned Magistrate did not exercise his discretion properly. There were no valid grounds warranting acquittal of the accused persons. It is also submitted that the learned Magistrate did not properly appreciate the scene mahazar Ext.P2 as well as the evidence of P.Ws.2 and 3 who are stated to be the occurrence witnesses and the evidence of P.W.6 who is the attestor to the scene mahazar.

3. The prosecution case is that the accused persons in

prosecution of their common object formed themselves into an unlawful assembly armed with deadly weapons on 4.4.1996 at 10 A.M. criminally trespassed into the Puthenparambil house in which C.W.1 is residing, situated on the western side of Thurumbunkal – Peraloor Road, Kothala Kara, demolished the kayyala having a width of 2 metres and a length of 50 metres and cut down teak, rubber and vatta trees causing a loss of Rs.2000/- to C.W.1. On the basis of the F.I. Statement of C.W.1 , C.W.9 the Sub Inspector of Police registered the F.I.R., arrested the accused and released them on bail. C.W.8 the Head Constable conducted investigation, prepared scene mahazar and questioned the witnesses. The prosecution examined P.Ws. 1 to 9 and marked Exts.P1 to P4. The court below has also examined the oral evidence on the side of the prosecution. It was noticed that the prosecution has stated that the accused persons demolished the two faced kayyala situated on the northern portion of the property to a length of 50 metres and a width of 2 metres and cut down four teak trees, rubber trees, vatta trees etc. In the charge sheet there is no mention regarding the kind of weapons with which they were armed. The further charge

against them is that they had demolished the northern kayyala of the property of P.W.1. P.W.2 did not state which kayyala of the property was demolished by the accused. In cross examination, she has stated that 10 to 45 people participated in the cutting open of the road and most of them belonged to distant places and she has no acquaintance with them. It was not brought out by the prosecution whether the accused who were in the dock had participated in the commission of offence. The evidence of P.W.3 would further show that the road was cut open through the southern portion of the property of P.W.1 and the northern portion of the property of Chandy. As per the charge sheet and the evidence of P.W.1 the accused had demolished the northern kayyala of his property. But as per the F.I. Statement the accused had demolished the southern kayyala of the property. It has also come out in evidence that 10 to 50 people according to P.Ws.2 and 3 had participated in the cutting open of the pathway and most of them who participated in the commission of offence belong to distant places. There is no evidence to show that the remaining accused whose names did not find a place in the F.I. Statement were got identified by the occurrence witnesses. On

the whole, the inconsistency of the evidence, either oral and documentary adduced by the prosecution warranting acquittal of the accused persons I find nothing illegal, irregular or improper on the findings rendered by the trial court to be interfered by this Court in revision. Counsel for the respondents has also stated that S.A.No.701 of 2004 litigating their civil rights is pending consideration of this Court.

The revision lacks merit and it is dismissed.

**K.S.RADHAKRISHNAN,**
**Ag.Chief Justice.**

vns